

AUG 3 1990

JOSEPH I. STANOL, JR.

In The  
Supreme Court of the United States

October Term, 1989

UNION TEXAS PETROLEUM CORPORATION, AGIP  
PETROLEUM COMPANY and MINATOME  
CORPORATION,

*Petitioners,*

versus

P L T ENGINEERING, INC., STATE SERVICE  
COMPANY, INC., POWER WELL SERVICE, INC.,  
GULF ISLAND-IV, BROWN & ROOT USA,  
INC. and SUB SEA INTERNATIONAL, INC.,

*Respondents.*

Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Fifth Circuit

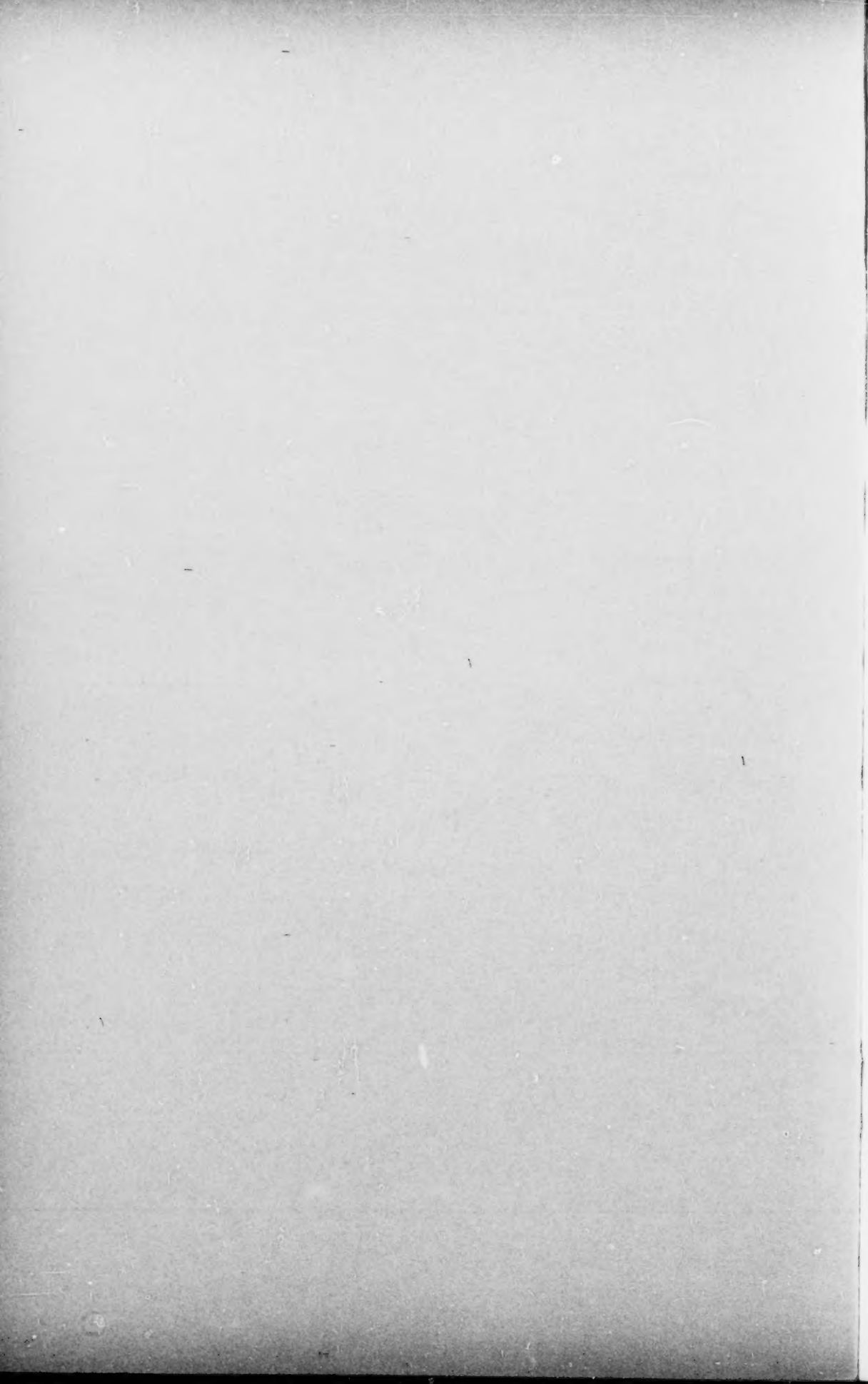
BRIEF IN OPPOSITION OF RESPONDENT,  
STATE SERVICE COMPANY, INC.

MITCHELL J. HOFFMAN\*  
JUDITH A. KAUFMAN  
LOWE, STEIN, HOFFMAN,  
ALLWEISS & HAUVER  
2450 Poydras Center  
650 Poydras Street  
New Orleans, Louisiana 70130  
Telephone: (504) 581-2450

*Attorneys for Respondent  
State Service Company, Inc.*

August 3, 1990

\* Counsel of Record



### QUESTIONS PRESENTED

1. Whether state law, as the surrogate federal law under Section 4 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333, applies to contracts for construction of a pipeline on the outer Continental Shelf.
2. Whether Section 4 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333, supercedes a state law's choice of law rule.
3. Whether Section 4 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333, operates to extend the boundaries of the State of Louisiana to the outer margin of the outer Continental Shelf for purposes of determining in which parish a lien should be recorded under the Louisiana Oil Well Lien Act.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED .....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE CASE.....	1
REASONS FOR DENYING WRIT .....	4
ARGUMENT .....	7
THE FIFTH CIRCUIT'S DECISION FOLLOWED THIS COURT'S REASONING IN <i>HERB'S WELDING</i> AND APPLIED THE PROPER ANALYSIS WHEN IT HELD THAT CONTRACTS FOR THE CONSTRUCTION OF A PIPELINE ON THE OUTER CONTINENTAL SHELF ARE GOVERNED BY OCSLA.....	7
THE FIFTH CIRCUIT'S DECISION BELOW FOLLOWS THIS COURT'S PRIOR RULING THAT THE OUTER CONTINENTAL SHELF LANDS ACT SUPERCEDES A STATE'S CHOICE OF LAW RULES .....	13
THE FIFTH CIRCUIT'S DECISION BELOW CORRECTLY INTERPRETS SECTION 4 OF OCSLA, 43 U.S.C. § 1333, WHICH OPERATES TO EXTEND THE BOUNDARIES OF THE STATE OF LOUISIANA TO THE OUTER CONTINENTAL SHELF FOR PURPOSES OF DETERMINING IN WHICH PARISH A LIEN SHOULD BE RECORDED UNDER THE LOUISIANA OIL WELL LIEN ACT .....	14
CONCLUSION .....	17

## TABLE OF AUTHORITIES

Page

## CASES:

*Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971)... 7, 13, 16*Corbitt v. Diamond M. Drilling Co.*, 654 F.2d 329  
(5th Cir. 1981)..... 5*Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473  
(1981)..... 7, 13, 16*Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985) . *passim**Kossick v. United Fruit Co.*, 365 U.S. 731 (1961)..... 9*Laredo Offshore Constructors, Inc. v. Hunt Oil Co.*,  
754 F.2d 1223 (5th Cir. 1985)..... 5, 11, 12*Lewis v. Glendel Drilling Co.*, 898 F.2d 1083 (5th Cir.  
1990)..... 6, 10*Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207  
(1986)..... 6, 10*Pippen v. Shell Oil Co.*, 661 F.2d 378 (5th Cir. 1981)..... 5*Rodrigue v. Aetna Casualty and Surety Co.*, 395 U.S.  
352 (1969)..... 6, 7, 10, 13, 14*Theriot v. Bay Drilling Corp.*, 783 F.2d 527 (5th Cir.  
1986)..... 5, 6*Thurmond v. Delta Well Surveyors*, 836 F.2d 952 (5th  
Cir. 1988)..... 5, 6*Union Texas Petroleum v. PLT Engineering, Inc.*, 895  
F.2d 1043 (5th Cir. 1990)..... 5, 9, 12

## STATUTES:

LSA-R.S. 9:4861..... 3

LSA-R.S. 49:6..... 15

## TABLE OF AUTHORITIES - Continued

Page

43 U.S.C. § 1331.....	3
43 U.S.C. § 1333.....	7, 14, 15
33 U.S.C. § 901.....	8

## OTHER AUTHORITIES:

Conference Report No. 1031, 83d Cong., First Ses- sion, 2 (1953).....	7, 15
--	-------

No. 90-60

---

In The  
**Supreme Court of the United States**  
October Term, 1989

---

UNION TEXAS PETROLEUM CORPORATION, AGIP  
PETROLEUM COMPANY and MINATOME  
CORPORATION,

*Petitioners,*

versus

P L T ENGINEERING, INC., STATE SERVICE  
COMPANY, INC., POWER WELL SERVICE, INC.,  
GULF ISLAND-IV, BROWN & ROOT USA,  
INC. and SUB SEA INTERNATIONAL, INC.,

*Respondents.*

---

**Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Fifth Circuit**

---

**BRIEF IN OPPOSITION OF RESPONDENT,  
STATE SERVICE COMPANY, INC.**

---

**STATEMENT OF THE CASE**

Union Texas Petroleum Corporation (hereafter  
"UTP"), AGIP Petroleum Company, Inc. (hereinafter

"AGIP") and Minatome Corporation (hereinafter "Minatome") own a leasehold on which the pipeline in question was constructed. This leasehold is located adjacent to the State of Louisiana in Vermillion block 237 on the federal outer Continental Shelf. UTP was designated as the operator of the oil and gas wells located or to be located on the lease. The owners, UTP, AGIP and Minatome, initiated a project to construct a gas transportation system to enable them to transfer gas produced on the lease to a 36 inch blue water pipeline owned by Columbia Gas Company.

To that end, UTP entered into a contract with PLT Engineering Company, Inc. ("PLT") for the design, fabrication and installation of a gas transportation system. PLT contracted with State Service Company, Inc. ("State Service") to furnish materials and/or to provide services to be used in the construction, operation and/or repair of the gas transportation system.<sup>1</sup> PLT also contracted with Brown & Root U.S.A., Inc. ("Brown & Root"), and Sub Sea International, Inc. ("Sub Sea"). PLT entered into these various subcontracts in order to achieve its principal obligation under its contract with UTP: to design, fabricate and install an underwater gas transportation line from a platform owned by UTP, AGIP and Minatome over the outer Continental Shelf to a side tap in the blue water pipeline.

In order to perform its obligations, State Service contracted with Power Well Service, Inc., ("Power Well").

---

<sup>1</sup> Pursuant to Rule 28.1 of the Rules of the Supreme Court, State Service informs the Court that there are no parent companies, subsidiaries or affiliates of State Service.



Power Well provided State Service with a vessel, the GULF ISLAND IV, which was used to assist State Service in performing its activities on the ocean floor.

State Service's principal obligation on the project, much akin to PLT's obligation, was to fabricate and install the side tap connecting UTP's production platform to its twelve inch pipeline, all of which were located on federal block area 237 Vermillion, and fabricate and install the hot tap assembly tie-in to the Columbia Gas Company pipeline located on federal block area 225 Vermillion. State Service also performed extra work for PLT on PLT's and UTP's request. The extra work primarily involved additional excavation to bury the pipeline.

With the services of State Service and the other sub-contractors, PLT successfully completed the construction and installation of the pipeline. Subsequently, UTP learned that PLT had not paid its subcontractors. In accordance with the contract provision between UTP and PLT, UTP withheld \$420,045.59 from the amount due under the contract and then instituted an interpleader action under Fed.R.Civ.P. 22. State Service answered the complaint and filed its counterclaim asserting a lien pursuant to the Louisiana Oil Well Lien Act, LSA-R.S. § 9:4861, *et seq.* ("LOWLA").

After cross motions for summary judgment, the district court held that: (1) the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.* (hereinafter "OCSLA") applied because the activities involved were not traditionally maritime, therefore, federal admiralty law was not applicable; (2) the choice of law provisions in the

subcontracts were unenforceable; (3) LOWLA was applicable as the surrogate federal law through OCSLA; and (4) the recordation requirements for the lien pursuant to Louisiana Law were met. The Fifth Circuit Court of Appeals, for somewhat different reasons, affirmed the holding of the district court. Thereafter, UTP petitioned this Court for review of that decision.

---

### REASONS FOR DENYING WRIT

1. The decision of the Fifth Circuit Court of Appeals in this action does not conflict with a decision of any other circuit court of appeals. The matter presently before this Court involves only decisions arising out of the Fifth Circuit. Apparently, there may be a conflict in the Fifth Circuit with respect to some issues raised in UTP's Petition for Writ of Certiorari. The Fifth Circuit, however, has not yet had the opportunity to resolve the apparent conflict. The matter is currently before the Fifth Circuit for consideration *en banc*.

The apparent conflict within the Fifth Circuit stems from decisions from the court which preceded this Court's decision in *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985). *Herb's Welding* limited the Fifth Circuit's expansive view of maritime law and held that a worker performing the tasks of building and maintaining pipes and platforms on the outer Continental Shelf was not engaged in maritime employment.

Some Fifth Circuit decisions before *Herb's Welding* have held that contracts for offshore drilling and mineral

operations from a vessel are maritime in nature. See *Pippen v. Shell Oil Co.*, 661 F.2d 378 (5th Cir. 1981); and *Corbitt v. Diamond M. Drilling Co.*, 654 F.2d 329 (5th Cir. 1981). Although decided subsequent to *Herb's Welding*, *Theriot v. Bay Drilling Corp.*, 783 F.2d 527 (5th Cir. 1986), also held that certain contracts for mineral exploration conducted from a vessel are maritime. *Theriot*, however, relied exclusively upon cases which predate *Herb's Welding*.<sup>2</sup>

Other decisions, however, have looked beyond the mere use of a vessel in mineral exploration to determine whether the primary activity is maritime in nature. Those decisions focus on the principal obligation of the contract and have held that where the contract calls for construction and services peculiar to the oil and gas industry, the contract is nonmaritime even though the contract contemplates the use of instruments of admiralty. Consequently, state law, through OCSLA, applies. See *Thurmond v. Delta Well Surveyors*, 836 F.2d 952, 955 (5th Cir. 1988) and *Laredo Offshore Constructors, Inc. v. Hunt Oil Co.*, 754 F.2d 1223, 1231-1232 (5th Cir. 1985). The decision below follows the holdings of *Thurmond* and *Laredo* and employs the "principal obligation" test of those cases. The decision also follows the reasoning of *Herb's Welding* and precludes the application of maritime law when the work performed on the outer Continental Shelf involves the construction of a pipeline.

---

<sup>2</sup> In addition to relying on cases which predate *Herb's Welding*, *Theriot* is clearly distinguishable on its facts. As the Fifth Circuit stated, "since no drilling on navigable waters from a vessel is involved here, *Theriot* is not controlling." *Union Texas Petroleum v. PLT Engineering, Inc.*, 895 F.2d 1043, 1049 (5th Cir. 1990).

*Lewis v. Glendel Drilling Co.*, 898 F.2d 1083 (5th Cir. 1990), a case subsequent to the decision below, called into question the validity of *Theriot* and noted the disparity among the cases which have addressed issues raised in UTP's writ. Although the *Lewis* court recognized that the *Thurmond* view that a movable offshore oil and gas rig, moored and engaged in exploration or production, is not a vessel and thus does not involve maritime law is the more realistic view, the *Lewis* court nonetheless followed the *Theriot* holding. *Id.* at 1086-1087. Because of the conflict in the decisions in the Fifth Circuit on this matter, the *Lewis* court suggested that the matter should be reviewed and decided by the court *en banc*. As noted in UTP's Application for Extension of Time to File Petition for Writ of Certiorari, the *Lewis* decision, which involves issues common to the instant case, is pending before the Fifth Circuit on UTP's request for a hearing *en banc*. Therefore, because the issues raised in UTP's writ involve only a conflict within the Fifth Circuit, and because those issues are presently before the Fifth Circuit for consideration *en banc*, UTP's request for review by this Court should be denied. The Fifth Circuit should be given an opportunity to do its own housecleaning before this Court should intervene. Moreover, UTP should have asked the Fifth Circuit for a rehearing *en banc* in this case.

2. The decision of the Fifth Circuit Court of Appeals in this action does not conflict with prior decisions by this Court in *Rodrigue v. Aetna Casualty and Surety Co.*, 395 U.S. 352 (1969); *Herb's Welding*, 470 U.S. 414; and *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986). Those cases have analyzed the application of OCSLA and have held that activities performed on the seabed, the subsoil and

the structures on the outer Continental Shelf are governed by OCSLA. Certainly, construction of a pipeline necessarily requires work on the seabed and subsoil. Pipelines do not float on the water.

3. The decision below follows this Court's prior rulings in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) and *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981) which held that OCSLA supercedes a state's choice of law rules. Therefore, the Fifth Circuit herein correctly held that the maritime choice of law provision in the contracts was unenforceable.

4. The Fifth Circuit's holding that the parishes adjacent to the outer Continental Shelf are the proper parishes in which to record a lien under LOWLA is consistent with OCSLA, 43 U.S.C. § 1333 and the intent of Congress to extend the boundaries of the state seaward to the outer margin of the outer Continental Shelf in order to determine which state law applies to the subsoil, seabed and fixed structures of the outer Continental Shelf. Con. Rep. No. 1031, 83 Cong. First Session 2 (1953).

---

## ARGUMENT

**THE FIFTH CIRCUIT'S DECISION FOLLOWED THIS COURT'S REASONING IN *HERB'S WELDING* AND APPLIED THE PROPER ANALYSIS WHEN IT HELD THAT CONTRACTS FOR THE CONSTRUCTION OF A PIPELINE ON THE OUTER CONTINENTAL SHELF ARE GOVERNED BY OCSLA.**

This Court stated the purpose of OCSLA in *Rodrigue* as follows:

The purpose of the Lands Act was to define a body of law applicable to the seabed, the subsoil, and the fixed structures . . . on the outer Continental Shelf. That this law was to be federal law of the United States, applying state law only as federal law and then only when not inconsistent with applicable federal law, is made clear by the language of the Act.

395 U.S. at 355-56.

In *Herb's Welding*, this Court criticized the Fifth Circuit's "expansive view of maritime employment" and reversed the Fifth Circuit, finding that

[t]he history of the Lands Act at the very least forecloses the Court of Appeals' holding that offshore drilling is a maritime activity and that any task essential thereto is maritime employment for LHWCA purposes.

470 U.S. at 422.<sup>3</sup> This Court also found in *Herb's Welding* that there is nothing inherently maritime about the construction and maintenance of pipelines and stated that those tasks "are also performed on land, and their nature is not significantly altered by the marine environment, particularly since exploration and development of the Continental Shelf are not themselves maritime commerce." 470 U.S. at 425. The decision below follows the reasoning and principles of *Herb's Welding*.

---

<sup>3</sup> *Herb's Welding* involved the application of the Longshoremen's and Harborworkers' Compensation Act (LHWCA), 33 U.S.C. §§ 901, *et seq.* As the court below noted, the threshold question under both LHWCA and OCSLA is whether the dispute arises out of traditional maritime activity.

The Fifth Circuit herein stated that in order to apply state law as the surrogate federal law under OCSLA, three conditions must be met: (1) the controversy must arise on an OCSLA location (i.e., the subsoil, seabed, or artificial structures permanently or temporarily attached thereto); (2) federal maritime law must not apply of its own force; and, (3) the state law must not be inconsistent with federal law. *Union Texas Petroleum v. PLT Engineering, Inc.*, 895 F.2d 1043, 1047 (5th Cir. 1990). The Fifth Circuit found that all of those conditions were met in the present case. In fact, UTP admits that the controversy arises on an OCSLA location and concedes for the purpose of argument that the state law at issue here is not inconsistent with any federal law. UTP, however, contends that the activity conducted on the outer Continental Shelf was maritime. Thus, the only question which remains is whether the contracts at issue are maritime in that they "relate[s] to ships and vessels, masters and mariners, as agents of commerce. . . ." *Kossick v. United Fruit Co.*, 365 U.S. 731, 736 (1961), *citing* *I Benedict*, Admiralty 131. As the court below correctly held, the contracts are not maritime.

Each contract involved a common goal: the construction and installation of a pipeline located in its entirety on the outer Continental Shelf. Surely, as this Court has stated, such an activity is not inherently a maritime activity. See *Herb's Welding*, 470 U.S. at 425. Each party was to perform various services in connection with the construction of that pipeline. While UTP basically admits at page 16 of its Petition for Writ of Certiorari that the installation of the pipeline on the outer Continental Shelf is not maritime, UTP nonetheless takes the position that



because such activity utilizes vessels and divers to assist in the project that that, in and of itself, removes the activity from the realm of OCSLA.

UTP's reasoning is illogical. Under UTP's reasoning, OCSLA would never apply because in order to reach the ocean floor one must necessarily use divers and/or vessels. UTP's argument precludes application of OCSLA to activities performed on the ocean floor and is in direct conflict with decisions of this Court which have already endorsed the Congressional mandate that OCSLA applies to activities performed on the seabed, subsoil and the fixed structures on the outer Continental Shelf. *Herb's Welding*, 470 U.S. 414, *Rodrigue*, 395 U.S. 352, *Tallentire*, 477 U.S. 207.

UTP also stresses that a divergent line of authority has arisen as to whether mineral exploration activity on the outer Continental Shelf is a maritime transaction. As mentioned, that divergent line of authority may only appear within the Fifth Circuit, and the issue is presently pending before the Fifth Circuit for consideration *en banc*. The Fifth Circuit may or may not eliminate any confusion. Moreover, as the decision below notes, those lines of authorities which hold that drilling operations conducted from a vessel are maritime generally predate *Herb's Welding*.<sup>4</sup>

---

<sup>4</sup> Although *Lewis*, 898 F.2d 1083, is subsequent to *Herb's Welding*, the *Lewis* court recognized that *Herb's Welding* may affect the validity of those holdings and specifically suggested that the matter should be considered *en banc*.



The Fifth Circuit herein and in *Laredo*, 754 F.2d 1223, followed this Court's reasoning in *Herb's Welding*. *Laredo* addressed essentially the same arguments which UTP sets forth here. There, *Laredo* argued that because the contract for the construction of a well platform on the outer Continental Shelf required the use of vessels and seamen, the contract was maritime and OCSLA did not apply. The court, however, held that:

The contract involved here . . . did more than charge *Laredo* with the responsibility of carrying workers and supplies to the well site. *Laredo's* principal obligation under the contract was the construction of a stationary platform, and, as *Laredo* conceded at oral argument, it is the alleged breach of this contract that gave rise to the instant action. While the contract no doubt contemplated the hiring of vessels and seamen to build the structure, the subject of this case has no direct relationship with these traditional subjects of maritime law. It is fundamental that the mere inclusion of maritime obligations in a mixed contract does not, without more, bring nonmaritime obligations within the pale of admiralty law. That the contract contemplated in part the use of instruments of admiralty, therefore, is not sufficient to oust OCSLA – adopted state law in this case.

*Id.* at 1231-32.

The contracts involved in the present action pertain to the construction of a pipeline. As in *Laredo*, it is the breach of those contracts which gave rise to the instant controversy. As this Court noted in *Herb's Welding*, the construction of a pipeline does not render that activity maritime merely because it occurred in a marine environment. 470 U.S. at 425. State Service actually performed

work on the ocean floor and near a riser attached to the UTP platform. Those activities took place on OCSLA locations. Under a plain reading of the Act, OCSLA applies. The fact that State Service had to use divers to get to the bottom of the sea does not transform the activity into a traditional maritime activity, precluding the application of OCSLA. *Union Texas Petroleum*, 895 F.2d 1043; *Laredo*, 754 F.2d 1223.

UTP, however, seems to believe that it is significant that the contract in *Laredo* called for a single contract to construct a platform, whereas the present matter involves various subcontracts to construct the pipeline. If PLT was able to construct the pipeline without the services of others, then it would have performed the same work as State Service and the other subcontractors; PLT would have also had to utilize vessels and divers. Would UTP have this Court hold that a contract for construction on the outer Continental Shelf is governed by OCSLA only when there are no subcontractors involved? To argue that the Court should analyze each subcontract individually as to the nature of the activity involved in each subcontract would only serve to add more confusion in the law. Under UTP's argument, the services performed by State Service would be governed by OCSLA only while its workers were on the ocean floor. Any matter that involved services beyond that would be governed by maritime law. This approach makes no sense and would serve to create mass confusion. As the court below found, the principal obligation of PLT and the subcontractors was to build the pipeline and connect it to UTP's platform and transmission line. 895 F.2d at 1049. In line with *Herb's Welding*, the court concluded that such activities

were not traditionally maritime and thus maritime law would not apply.

Because the decision below merely applies the principles of *Herb's Welding* in concluding that the construction of a pipeline on the outer Continental Shelf is not a maritime activity, the decision does not conflict with prior decisions of this Court in analyzing the application of OCSLA. Moreover, because there is no conflict among the various circuits on this issue and because the only conflict which might exist is within the Fifth Circuit where a consideration *en banc* is currently pending, UTP's writ should be denied.

#### THE FIFTH CIRCUIT'S DECISION BELOW FOLLOWS THIS COURT'S PRIOR RULING THAT OCSLA SUPERCEDES A STATE'S CHOICE OF LAW RULES

The Fifth Circuit's holding that OCSLA's mandated choice of law provision requires the application of the law of the adjacent state even in the presence of a choice of law provision in the contract to the contrary is not at variance with prior statements by this Court. This issue has been put to rest by this Court in *Huson*, 404 U.S. 97, and *Gulf Offshore*, 453 U.S. 473. In *Gulf Offshore*, this Court succinctly stated that "OCSLA does supercede the normal choice of law rules that the forum would apply." 453 U.S. at 482 n.8. To hold otherwise and adopt the argument set forth by UTP that the maritime choice of law provision should apply would only serve to "subvert the congressional intent documented in *Rodrigue*, . . . that admiralty doctrine should *not* apply under the Lands Act." *Huson*, 404 U.S. at 104.

Thus, the holding of the Fifth Circuit is not only consistent with prior decisions of this Court, but is in line with the intent of Congress to create a body of law on the outer Continental Shelf for which maritime law was not suited. Consequently, even under Louisiana conflict of law principles, the party's stipulation as to the choice of law to govern the contract must not be given effect because there is jurisprudential law from this Court and statutory law stemming from OCSLA which requires the court to refuse to honor the contract's choice of law provision. This Court must take note that there was no contractual choice of law provision between UTP and State Service: no contractual relationship between the two existed. Therefore, the decision below does not raise any important question which conflicts with prior decisions of this Court with respect to the mandated choice of law provisions of OCSLA.

**THE FIFTH CIRCUIT'S DECISION BELOW CORRECTLY INTERPRETS SECTION 4 OF OCSLA, 43 U.S.C. § 1333, WHICH OPERATES TO EXTEND THE BOUNDARIES OF THE STATE OF LOUISIANA TO THE OUTER CONTINENTAL SHELF FOR PURPOSES OF DETERMINING IN WHICH PARISH A LIEN SHOULD BE RECORDED UNDER LOWLA.**

Because federal laws are inadequate to cope with the full range of potential legal problems which may arise on the outer Continental Shelf, and rather than create a new body of federal law, Congress chose to borrow the law of the adjacent states to fill in the gaps of federal law. See *Rodrigue*, 395 U.S. at 357-358. In determining which state laws would be adopted as the federal law on the outer Continental Shelf, Congress adopted the state laws "for

the area of the shelf that would be in the boundaries of the state if such boundaries were extended seaward to the outer margin of the outer shelf." Con. Rep. No. 1031, 83d Cong. First Session, 2 (1953).

Louisiana Law is the surrogate federal law in this matter pursuant to 43 U.S.C. Section 1333(a)(2)(A) as "if its boundaries were extended seaward to the outer margin of the outer Continental Shelf". LOWLA requires recordation of a lien in the parish where the property is located in order to preserve the privilege granted by the Act. Because UTP's property is located in federal territory, this restriction interferes with the application of state law on federal land; therefore, the Fifth Circuit properly extended the boundaries of Vermillion Parish to the outer margin of the outer Continental Shelf in order to apply Louisiana Law as the surrogate federal law to the work performed by State Service. This decision is not only consistent with the construction of OCSLA, but is also consistent with Louisiana state law at LSA-R.S. 49:6, which provides that:

the gulfward boundary of all said coastal parishes extend coextensively with the gulfward boundary of the State of Louisiana.

The Fifth Circuit's decision does not constitute judicial legislation; rather, the decision logically interprets OCSLA and the Louisiana state law in order to determine the appropriate parish in which to file a lien for work performed on the outer Continental Shelf. UTP's position that a lien cannot be perfected for work performed on the outer Continental Shelf would result in denying any contractor or subcontractor a lien in any construction contract on the outer Continental Shelf. It would be

anomalous to deny a lien to State Service when the principal purpose of adopting state law under OCSLA was to protect those, like State Service, who provide labor, services, or materials on the outer Continental Shelf. See, e.g. *Huson*, 404 U.S. at 103-04. The Fifth Circuit recognized this anomaly and filled the gap that exists in the law. This reconciliation was reasonable to implement the mandate of Congress which requires state law to apply to work performed on the outer Continental Shelf.

Furthermore, contrary to UTP's contention, this extension of the boundaries of the State of Louisiana was not specifically rejected by Congress. As in *Gulf Offshore*, 453 U.S. 473, UTP's argument confuses the political jurisdiction of a state with its judicial jurisdiction. Section 1333(a)(3) addresses the geographical boundaries of a state because Congress' primary focus in enacting OCSLA was to assure federal control over the shelf and its resources. The language was intended to make it clear that the adoption of state law could not be a basis for a State to make a claim to participate in the administration of or revenues from areas outside the State's boundaries. The language of the provision does not refer to causes of action by a party under state law. *Id.* at 482.

The present matter involves judicial jurisdiction: the operation of state law by extending the boundaries of the parishes of the State of Louisiana to the outer margin of the outer Continental Shelf in order to apply state law to determine in which parish a lien should be filed pursuant to LOWLA. Thus, because the decision below is consistent with OCSLA and state law, consideration by this Court is unwarranted and UTP's writ for certiorari should be denied.

---



## CONCLUSION

Petitioners have failed to show that the decision of the Fifth Circuit is in conflict with the decisions of this Court which have analyzed and addressed the application of OCSLA. Moreover, petitioners have failed to show that the decision below is in conflict with a decision from any other circuit court of appeals. If any conflict exists, it may exist within the Fifth Circuit where some of the issues raised in petitioner's writ of certiorari are presently before the Fifth Circuit for consideration *en banc*. The Fifth Circuit may resolve these issues. Consequently, petitioners have failed to demonstrate that their writ of certiorari is warranted and therefore, it should be denied.

Respectfully submitted,

MITCHELL J. HOFFMAN\*

JUDITH A. KAUFMAN

LOWE, STEIN, HOFFMAN,

ALLWEISS & HAUVER

2450 Poydras Center

650 Poydras Street

New Orleans, Louisiana 70130

Telephone: (504) 581-2450

*Attorneys for Respondent*

*State Service Company, Inc.*

\* Counsel of Record